

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No.721 of 1995

with

CIVIL REVISION APPLICATION No.722 of 1995

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For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

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BAI RAMBHA DHARAMSHI

Versus

PATEL HIRABHAI UKABHAI

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Appearance:

1. Civil Revision Application No. 721 of 1995  
Mr. Mehul Shah for Petitioner  
None present for respondents
2. Civil Revision ApplicationNo 722 of 1995  
Mr. Mehul Shah for Petitioner  
None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28.12.1998

COMMON JUDGEMENT (C.A.V.) :

1. These two CRAs arise out of two separate suits,

but the parties therein are common and the questions of fact and law involved are also common. As such same are being taken up for hearing together and disposed of by this common order.

2. Facts of the case for the decision of these CRAs are being taken from CRA No.721 of 1995.

3. Father of plaintiffs - respondents nos.2 and 3 sold property in dispute to defendant no.1 respondent no.1 by a registered sale deed, way back in 1966. The land in dispute is an agricultural land. In 1974 the petitioners filed Special Civil Suit No.32 of 1974 for declaration of sale deed to be illegal of the disputed land executed by their father in favour of respondent no.1. That suit came to be dismissed by the trial court, meaning thereby the case of the petitioners has not been accepted. Against the judgment of the learned trial court the petitioners filed First Appeal before this Court in the year 1981. That appeal is pending.

4. It is submitted that purchasers of the land in dispute filed two suits out of which these two CRAs have arisen. In these two suits the petitioners filed an application under sec.10 of the Code of Civil Procedure ("the Code" for brevity) and prayer is made that proceedings of these suits may be stayed as the matter in issue therein is also directly and substantially in issue in the previous suit which is pending between the parties in this court in the First Appeal. These applications filed by the petitioners found favour with the learned trial court and proceedings of both the suits were stayed.

5. Under the impugned order the learned trial court has vacated the order earlier passed by it of staying the suits under sec.10 of the Code and further order to continue proceedings of the suit. These orders have been challenged by the petitioners before this Court in these two CRAs. These CRAs have come up for admission before this Court on 19.4.1995. On that day, the CRAs were admitted and ad interim relief in terms of para 7(b) has been granted, which reads as under :

"Pending hearing and final disposal of this Revision Application, implementation and operation of the order dated 31.3.1995 in Civil Suit No.41 of 1981 by the Court of the Civil Judge, JD at Dhoraji, may kindly be ordered to be stayed."

6. For all these years, interim relief granted by this court in these CRAs continues.

7. Learned counsel for the petitioners contends that the order passed by the learned court below is perverse. Once the learned trial court has found it to be a fit case where proceedings of the suits are to be stayed under sec.10 of the Code as First Appeal is pending in this court, it has no jurisdiction to review suo motu and vacate the stay order granted earlier by it. It is next contended that while vacating stay order learned trial court should have directed the petitioners to get their First Appeal decided at an early date which is pending in this court. But instead of adopting that course it has vacated the stay order. It has lastly been contended that interim relief granted by this court may be ordered to be continued and in the meanwhile the petitioners will get their first appeal pending in this court decided expeditiously.

8. I have given thoughtful considerations to the contentions of the learned counsel for the petitioner.

9. After going through the order impugned in these CRAs of the trial court, I am satisfied that the learned trial court has not correctly and properly understood the provisions of sec.10 of the Code. I am also to certain extent in agreement with the contention of the learned counsel for the petitioner that ordinarily once the civil court has stayed proceedings of the subsequent suits on the ground that the appeal is pending in this Court in which matter is directly and substantially in issue and that stay should have been allowed to continue till the appeal is decided. But the learned trial court has rightly observed that the petitioners have not taken any effective steps to get the appeal of the 1981 decided by this Court. The suits out of which these two CRAs have arisen are of the year 1981 and that appeal is also of the same year. More than 17 years have already been passed, still the suits are at the initial stage. In the suit filed by the petitioners earlier it has been decided inter se the parties that the sale deed executed in respect of the disputed agricultural land by their father is perfectly legal and valid. As such from that decree rightly the purchasers have taken sufficient encouragement to file the suits for possession. The petitioners appear to be in possession of the land in dispute; there is all possibility and further necessary inference can be drawn that they are interested to delay the proceedings of the previous suit as well as these suits. In this Court appeals of years later than 1981

have been decided. In case the petitioners are really intending or desirous of getting their First Appeal pending in this court decided, then they could have persuaded the court to take up that appeal for hearing at early date. These steps have not been taken by the petitioners, which is sufficient to draw inference that they are not interested to get the First Appeal decided at an early date. By keeping their First Appeal pending they have further invited two suits for possession against themselves. The substance of the matter is very relevant and important in the case where the courts are to pass discretionary order. Not only this conduct of the party concerned is also equally important and relevant in the matter where the court has to pass the order under its discretionary power. The conduct of the petitioners in this matter is not free from doubt and suspicion. As stated earlier there is all possibility that they are the persons who are delaying the proceedings in the First Appeal, as a result thereof so as to keep these two suits under stay and to enjoy fruits of the property. It is a case where their father has sold the property and challenge to the sale has been made after more than 8 years by these persons. In this case in hand the learned trial court on the basis of factual aspect came before it passed the impugned order, which is perfectly legal and justified and in the interest of justice to which no exception can be taken. The proceedings of the two suits were stayed under sec.10 of the Code and later that order was recalled on grounds given in the impugned order.

10. It is not the law that whatever orders passed by the learned trial court are subject to revision by this court under sec.115 of the Code. It is not disputed that power of revision conferred upon this court under sec.115 of the Code are discretionary and is an equitable jurisdiction. Not only the revisional powers of this court are discretionary but further that discretion can be exercised only in cases where against the order impugned in the revision application no appeal lies and where such subordinate court appears to have exercised jurisdiction not vested in it by law or to have failed to exercise jurisdiction so vested or to have acted in exercise of its jurisdiction illegally or with material irregularity. The matter does not end here. A further rider has been put by the legislature in exercise of revisional power by this court under sec.115 of the Code. By inserting proviso to sec.115(1) of the Code it is provided that this Court shall not under this section vary or reverse any order made or any order deciding an issue, in the course of suit or other proceedings except

where an order if it has been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings or the order if allowed to stand will occasion a failure of justice or cause irreparable injury to the party against whom it was made.

11. The learned trial court has found in this case that in the First Appeal proceedings of these two suits have not not been stayed. The decision given by this court in the First Appeal, where valuation thereof is less than Rs.1 lakh same is subject to appeal, i.e. Letters Patent Appeal before Division Bench. The decision of Division Bench of this Court in Letters Patent Appeal is further appealable to the Apex Court under Article 136 of the Constitution of India. So if we go by hierarchy of this appellate forums in this matter the First Appeal pending in this Court is not the last one to be crossed by the purchasers. Similarly it is not the last litigation in the previous suit by the petitioners. In appropriate case the court may be justified to vacate the stay granted under sec.10 of the Code and proceed with the suit/ suits and more so in a case where the appeal for pendency thereof the suits were stayed, is also not decided by this Court for 17 years and where this court has also not stayed the proceedings of the civil suits therein. So for all these years the suits are lying at the stage wherefrom they started. Though in appropriate case the court could have continued the stay of the suits ordered by it under sec.10 of the Code, but in view of the conduct of the party who is beneficiary of the stay and further enjoying the fruits of the land in dispute, it has all justification to reconsider its order and to decide the same in accordance with law. Though on merits I do not find it to be a fit case where this court exercises its discretionary powers in favour of the petitioners, but at the same time I consider it to be appropriate that the learned trial court may be permitted to proceed with the two suits and reach to the stage of conclusion of evidence of both the parties. In case in the meanwhile the First Appeal pending in this Court is not decided then it may not pronounce the judgment in the suits. It is expected of the petitioners to file an application before this Court for early disposal of the First Appeal. In case such an application is filed, it is expected that this court may decide the same and may list the First Appeal for hearing at early date as it is being appeal of 1981.

12. To the extent aforesaid the order of the learned trial court in these two CRAs stand modified. Both the CRAs are disposed of in these terms. Rule is made

absolute to the aforesaid extent. No order as to costs.

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